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ORGANIZATION:		DATE:
US Patent and Trademark Office		October 20, 2005
ART UNIT:	CONFIRMATION NO.:	TOTAL NO. OF PAGES INCLUDING COVER:
3622		17
FAX NUMBER:		APPLICATION SERIAL NO.:
571-273-8300		09/248,160
ENCLOSED:		ATTORNEY DOCKET NO.:
Response to Non-Compliant Appeal Brief and Supplemental Appeal Brief		RP9-98-096

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

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**'IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Richard W. Chester

Serial No.: 09/248,160

Filed: 02/09/1999

For: S/M FOR INSTALLING PC SOFTWARE

ATTORNEY DOCKET NO.: RP9-98-096

Examiner: Arthur D. Duran

Art Unit: 3622

RESPONSE TO NON-COMPLIANT APPEAL BRIEF UNDER 37 C.F.R. §41.37

Mail Stop Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The attached Supplemental Appeal Brief is submitted herewith in response to the Notification of Non-Compliant Appeal Brief mailed on October 3, 2005.

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Typed or Printed Name: Jane Graham Date: October 20, 2005 Signature: _____

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SUPPLEMENTAL APPEAL BRIEF UNDER 37 C.F.R. §41.37

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Date: October 20, 2005

Signature

SUPPLEMENTAL APPEAL BRIEF

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REAL PARTY IN INTEREST

The real party in interest in the present Application is International Business Machines Corporation, the Assignee of the present application as evidenced by the Assignment set forth at reel 9763, frame 0295.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, the Appellants' legal representative, or assignee, which directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-21 stand finally rejected by the Examiner as noted in the final rejection dated April 6, 2004. The rejection of Claims 1-21 is Appealed.

STATUS OF AMENDMENTS

No amendment to the claims has been submitted subsequent to the final rejection.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Each of the independent claims in the present application, Claims 1, 7, 12 and 16, recites, as either a system or a method, the technique of storing programs within a computer in an unusable form, selecting particular programs based upon the users position and requirements and thereafter converting those selected programs into usable form. The usable form of these programs is then stored and a list of those programs is created to assist in the paying of royalties on only the selected software. Alternatively, payment of royalties on the selected programs which have been converted is recited.

As noted in the present specification at p. 4, lines 13 *et seq*, in large companies there are a large number of personal computer work stations which require a great variety of software, some of which is general purpose and other of which is customized to the needs of the user. A large company will generally wish to match the software on a workstation to the users requirement and not provide either too little software or too much software in order to permit the user to perform his

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job responsibilities optimally and not require the payment of inordinate amounts of royalties on software which is not utilized.

The prior art teaches loading a common set of base software which is required by all users onto each computer and thereafter downloading unique requirements for each user utilizing a data transmission network. A second approach involves loading all possible software which any user within the company may wish to use and then having the user either ignore the unwanted software or delete it.

The process illustrated in Fig. 4 of the present application and described in p.13, lines 10 *et seq.* depicts each element of each independent claim in the present application. As described, the process may be implemented during the manufacture or assembly of a personal computer prior to shipment to the customer or at the time of deployment of the personal computer by information technology professionals.

First, a master load of all computer programs utilized by the potential users is prepared at block 150 in a suitable form, either as a separate media, such a CD ROM or as an image on a separate server, such as is described in the prior art. The master image is then converted into an unusable form by techniques such as compression and/or encryption as depicted at block 152. Once the master image has been compressed and/or encrypted it is in an unusable form until it is decompressed utilizing a decompression technique and decrypted utilizing an appropriate key to reverse the compression and/or encryption.

The converted and/or encrypted master data is then copied onto each personal computer during manufacture or prior to deployment, without utilizing the data transmission network of the company, as depicted at block 154. Thus, while many pieces of individual software programs are now resident on each personal computer none of the programs are usable by the personal computer until each piece of software to be utilized has been decrypted and/or decompressed with the compression serving to minimize the space that the software requires for storage on the personal computer and encryption serving to prevent unauthorized use or copying of that software.

Thereafter, each computer is delivered for customization as noted at block 156. This delivery could be to the end user of a particular personal computer or to an IT professional who is customizing each personal computer for the end user. A user is identified, as depicted at block 158. This identification of the user is accomplished in any appropriate manner. The software to be

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loaded could be based upon the well-known Universally Unique ID "UUID" and allows for the identification of the platform software suitable for the user, based upon a listing in the utility, from a remote server through the data transmission network or because a functional area such as "accounting" has been entered. In any event, the user is identified at block 158 and a proposed load of software for selection at block 160. This selection may be effective to add software which could not otherwise be selected or delete software which would normally be loaded, allowing a user to customized this software to be operating and usable on his personal computer.

Once the software for a particular personal computer has been selected at block 160, the selected software is then converted from unusable form to usable form. Many personal computers have a utility for decompressing software and the Personal Computer Security reference proposes software to accomplish decryption be installed on personal computers to provide for conversion of encrypted files into usable files. This decryption may be accomplished utilizing an appropriate key. The key may be the same for each program or each program may have a separate key and the data transmission network within a corporate entity may be utilized to obtain the key for the software which has been selected.

Unselected software from the personal computers may be removed by erasing the storage at block 154. While erasing unselected software will free up some storage based on the hard file, erasing the software will then preclude its later selection and activation. Thus, certain corporations will prefer to skip the step of erasing the unselected software to allow the software to remain in place in useable form until it is desired.

Next, as illustrated at block 166 of Fig.4, a list of the selected software which has been decrypted or otherwise converted is prepared and utilized for the paying of royalties. This list may be communicated through the data transmission network to the server or may be prepared in some other form to facilitate the payment of royalties. The necessary royalties for the software usage are then calculated, based upon the number of computers and the royalties are paid, as depicted at block 168.

Fig. 5 illustrates a block diagram of a software module which may be utilized to select particular software and, an appropriately programmed computer utilizing that software constitutes the modules set forth within Claim 12.

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Each of the steps set forth within an independent claim of the present application can be readily accomplished utilizing an appropriately programmed computer having software installed therein which implements the process depicted within Fig. 4 and described above.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. The Examiner's rejection of Claims 12-13 and 15 under 35 U.S.C. §103(a) as being unpatentable over *Stringer*, European Patent No. 601,500 in view of *Carroll*, U. S. Patent No. 6, 530,019 is to be reviewed on Appeal;
- B. The Examiner's rejection of Claims 7-8 under 35 U.S.C. §103(a) as unpatentable over *Stringer* EP 601,500 in view of *Carroll*, U. S. Patent No. 6,530,019 and further review of *Wiedemer*, U.S Patent No. 5,155,680 is to be reviewed on Appeal;
- C. The Examiner's rejection of Claims 1-2, 4-6, and 14 under 35 U.S.C. §103(a) as being unpatentable over *Stringer* and *Carroll* as above, and further review of *Casey et al.*, U.S. Patent No. 6,243,745 is to be reviewed on Appeal;
- D. The Examiner's rejection of Claim 3 under 35 U.S.C. §103(a) as being unpatentable over *Stringer* and *Carroll* in view of *Casey et al.*, as applied to Claim 1 above, and further review of *Wiedemer*, U.S. Patent No. 5,155,680 is to be reviewed on Appeal; and
- E. The Examiner's rejection of Claim 9-11 and 16-21 under 35 U.S.C. §103(a) as being patentable over *Stringer* and *Carroll* in view of *Wiedemer* as applied to Claim 7-8 above, and further review of *Casey et al.*, U. S. Patent No. 6,243,745 is to be reviewed on Appeal.

ARGUMENT

- A. The rejection of Claims 12-13 and 15 under 35 U.S.C. §103(a) as unpatentable over *Stringer*, E.P. 601,500 in view of *Carroll*, U.S. Patent No. 6,530,019 is not well founded and it should be reversed.

Claim 12, an exemplar of the Claims of this group, expressly recites the provision of a personal computer system which is loaded with software comprising a processor, a storage device, and "several programs loaded on the storage device in such a way as to make the programs

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unusable..." thereafter, a software module associated with the processor is recited as making "selected" programs "active and usable..." Appellant urges the Board to consider that *Stringer* teaches the so-called "try and buy" technique whereby actual operational software is loaded into a computer or transferred to the user of the computer and wherein that software is operational in either a full function or limited function mode so that the user may evaluate the software and thereafter purchase the software, obtaining full unrestricted functional use of that material. In responding to this argument during prosecution of the present application the Examiner dismisses this position and notes with respect to *Stringer* that "to the extent that the software is encrypted and of limited functions, where full use is not permitted, and only fully usable upon payment and receiving the code, *Stringer* teaches pre-loading unusable software." See the final rejection dated April 6, 2004, paragraphs 7.

In clear contrast to the Examiner's position, *Stringer* at col. 5, line 17, *et seq* thereof, expressly teaches "the present invention allows a user to evaluate fully functional versions of original materials before purchasing the materials. Because the invention operates with any original material, there is no need for the author of the material to modify the original version to create a trial or evaluation version of the material. Rather, the invention allows any individual to transform an original version of the material into an evaluation without any special knowledge of the content of the original material."

Similarly, at col. 13, line 50-55, *Stringer* teaches "this embodiment of the present invention provides enhanced value and allows personal configuration by a pre-loading software, ready to try, on a computer system. If the customer is satisfied with the software, the customer can purchase the product, and convert it to unlimited ownership." It should thus be apparent that *Stringer*, the Examiner's protestations to the contrary, does not teach the loading of a computer system with unusable software wherein selected portions of the software are thereafter converted to a usable form.

The Examiner also cites *Carroll*, U.S. Patent No. 6,530,019 at col. 3, line 60 thorough col. 4, line 15 and col. 2, lines 20-25 for a teaching of programs loaded onto a storage device in a manner so as to make those programs unusable. *Carroll* teaches a system in which all software, other than the boot sector on a hard drive storage device, is made unusable as the computer is shipped by shipping the computer with a modified boot record which has incorrect data stored in the partitions specification entries. (see col. 4, lines 1-6) Thus, the teaching of *Carroll* is that all applications

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stored within the hard disk drive are unusable, as those partitions other than the partition which contains the boot record cannot be reached due to the incorrect entries within that portion of the modified boot record.

Thereafter, in accordance with the teaching of *Carroll*, once a user has agreed to accept the terms of a software contract, the boot record is modified so that software applications stored in other partitions may be accessed. In this manner all software loaded within the hard disk drive of *Carroll* is indeed initially unusable; however, once the modified boot record has been corrected, all software within the hard disk drive is thereafter usable. Thus, in the opinion of the Appellant, *Carroll* fails to teach a method or system whereby selected programs may be made active and usable while non-selected programs are placed in a permanently unusable condition.

Further, Appellant urges that as *Stringer* expressly teaches that all forms of software loaded within the system are active and fully usable for evaluation purposes the combination of *Carroll* and *Stringer* is improper as software could not possibly be evaluated as taught by *Stringer* if it is initially loaded into a hard drive which is not accessible, as taught by *Carroll*. Consequently, any attempt at a combination of *Carroll* and *Stringer* does clear violence to the teaching of each reference and for this reason and the reason set forth above Appellant urges the Examiner's rejection of Claims 12-13 and 15 over this combination of references is improper and should be reversed.

B. The Examiner's rejection of Claims 7-8 of 35 U.S.C. §103(a) as unpatentable over *Stringer*, E.P. 601,500 in view of *Carroll*, U. S. Patent No. 6,530,019 and further in view of *Wiedemer*, U.S. Patent No. 5,155,680 is not well founded and it should be reversed.

The Examiner's cites *Wiedemer* for its teaching of a billing method which may include payment after selection, conversion and storage in a usable form; however, *Wiedemer* fails to show or suggest in any way the initial loading of software into a computer in unusable form, selection of portions of that software for conversion into usable form and the payment of royalties on only those programs which have been selected, converted and stored in usable as set forth within Claims 7, the exemplar of the present group of claims. Further, for the reasons set forth above with respect to the rejection of Claims 12-13 and 15, Appellant once again urges that *Stringer* and *Carroll* cannot be combined to show or suggest in any way the invention of the present application.

C. The Examiner's rejection of Claims 1-2, 4-6 and 14 under 35 U.S.C. §103(a) as unpatentable over *Stringer*, E.P 601,500 and *Carroll*, U.S. Patent No. 6,530,019, as above and further in view of *Casey et al.*, U.S. Patent No. 6,243,745 is not well founded and it should be reversed.

Claim 1, the exemplar for the claims of this group, expressly recites the loading of selected and non-selected software in unusable form into a personal computer wherein the selected software is later converted and loaded in usable form. The selected programs are selected based upon the user's position and requirements and are converted by the processor from unusable to usable form, whereby the personal computer can create a list of the selected software for accurate payment of royalties on only the selected software.

The Examiner cites *Casey et al.* for its alleged teaching of the selection of programs based upon a user's position or function; however, no such teaching within *Casey et al.* overcomes the deficiency of the combination of *Stringer* and *Carroll* as set forth above. As noted above, *Stringer* teaches the loading of software into a computer in fully functional usable form for evaluation and *Carroll* teaches a technique whereby no software on the computer may be utilized until the modified boot record has been corrected and thereafter all software within the hard disk becomes usable. Thus, no teaching of the selection of software based upon a user's position or function contained within *Casey et al.* can be said to anticipate, show or suggest the invention set forth within the claims of this group in that *Stringer* and *Carroll* either cannot be combined or, in the alternative, when combined do not show or suggest in any way the conversion of selected programs into a usable form as set forth within the claims of this group. Consequently Appellant urges that the Examiner's rejection of Claims 1-2, 4-6, and 14 is improper and it should be reversed.

D. The Examiner's rejection of Claim 3 under 35 U.S.C. §103(a) as unpatentable over *Stringer*, E.P 601,500 and *Carroll*, U.S. Patent No. 6,530,019, in view of *Casey et al.*, U.S. Patent No. 6,243,745 as applied to Claim 1 above, and further in review of *Wiedemer*, U.S. Patent No. 5,155,680 is not well founded and it should be reversed.

Claim 3 expressly recites the provision of a software module for converting selected software from an unusable form into a usable form in response to selection thereof and that the list of selected software upon which a royalty is paid is that software which has been converted from unusable form to usable form. The Examiner cites *Wiedemer* for its teaching of the creation of a

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list of selected software, upon which a royalty is paid. *Wiedemer* teaches utilization of a hardware security module and removable billing module which can be utilized in conjunction with enciphered software which is present on a diskette and which will be authorized for utilization once appropriate data has been stored within the billing and security module to ensure that the user pays the appropriate royalty for utilization of that program. Thus, nothing within *Wiedemer* shows or suggests the loading of selected and unselected software into a computer in unusable form so that thereafter selected software based upon a user's position and requirements may be converted to usable form and wherein the computer creates a list of that selected software for payment of royalties utilizing a software module as set forth within Claim 3.

Additionally, as noted above, Appellant once again urges that the combination of *Stringer* and *Carroll* is either inappropriate, for the reasons set forth above, or fails to show or suggest the invention set forth within the independent claims of the present application.

Appellant therefore urges that the Examiner's rejection of Claim 3 is inappropriate and should be reversed.

E. The Examiner's rejection of Claims 9-11 and 16-21 under 35 U.S.C. §103(a) as unpatentable over *Stringer*, E.P. 601,500 and *Carroll*, U.S. Patent No. 6,530,019, in view of *Wiedemer*, U.S. Patent No. 5,155,680 as applied to Claim 7-8 above, and further in view of *Casey et al.*, U.S. Patent No. 6,243,745 is not well founded and it should be reversed.

The Examiner cites *Casey et al.* against this group of claims in addition to the citation of *Stringer*, *Carroll* and *Wiedemer* as noted above. *Casey et al.* teach the selection of computer resources for a particular user by specifics of each user which are developed as a result of data entries made in response to particular prompt panels. Nothing within *Casey et al.* shows or suggests in any way the loading of selected and unselected software into a computer and the subsequent determination of selected software based upon a user's position or responsibility, the conversion of that selected software into usable form, and the subsequent storage of that software in usable form so that royalties may be paid on only that software which is utilized by a particular user. Consequently, for this reason and, as noted above, for the inappropriate nature of the combination of *Stringer* and *Carroll*, Appellant urges that this rejection is not well founded and that it should also be reversed.

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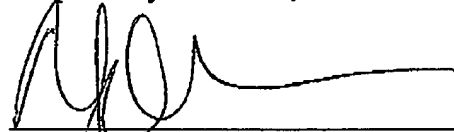
In summary, each of the independent claims in the present application teaches a technique whereby specifically tailored software packages for particular individuals within a large corporate entity may be created without either overburdening the bandwidth of an internal company network by downloading that software via the internal network or by requiring every possible software package to be loaded in an operational fashion within each computer within the organization, thereby subjecting the organization to unduly large royalty payments for the utilization of that software.

Each of the claims in the present application is directed to a technique of loading software into a computer in unusable form and thereafter selectively converting particular software applications into a usable form so that only that software application required by a particular user are usable and must have royalties paid thereon.

Primary references relied upon by the Examiner either teach the loading of software in a fully functional evaluation mode onto each computer or a technique whereby none of the software on a computer is usable until the user has agreed to selected terms and conditions. As a result of this position, Appellant urges that Claims 1-21 each define patentable subject matter over these references and reversal of all rejections is respectfully requested.

No extension of time for this response is believed to be necessary. However, in the event an extension of time is required, that extension of time is hereby requested. Please charge any fee associated with an extension of time as well as any other fee necessary to further the prosecution of this application to LENOVO DEPOSIT ACCOUNT No. 50-3533.

Respectfully submitted,



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APPENDIX

1. A personal computer system initially loaded with software including selected and non-selected software in unusable form, with the selected software later converted and loaded thereon in usable form, the computer including a processor, a storage device coupled to the processor for storing programs therein, with selected programs stored in the storage device in usable form after conversion from unusable form, said selected programs having been selected based on the user's position and requirements, said selected programs having been converted by the processor from unusable form and stored in usable form, with non-selected programs not being converted into usable form, said personal computer creating a list of the selected software for paying royalties on only the selected software.
2. A personal computer system of the type described in Claim 1 wherein the personal computer processor includes a software module which erases the non-selected software to remove it from the personal computer.
3. A personal computer system of the type described in Claim 1 wherein the personal computer includes a software module for converting the selected software from an unusable form into an usable form in response to the selection and the list of selected software upon which a royalty is paid is the software which is converted from unusable to usable form.
4. A personal computer system of the type described in Claim 1 wherein the personal computer includes a software module for converting the selected software from an encrypted form into an unencrypted form and the list of selected software upon which a royalty is paid includes the software which is converted from encrypted to unencrypted form.
5. A personal computer system of the type described in Claim 4 wherein the personal computer includes a software module for converting the selected software from a compressed form to an uncompressed form.
6. A personal computer system of the type described in Claim 1 wherein the computer includes

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a software module for selection of the selected software, including means to input the user's function and to select software for addition or deletion based on the software associated with the user's function.

7. A method of installing a variable selection of software programs on a personal computer, the steps of the method comprising:

loading onto the personal computer storage a plurality of software programs in unusable form, including some software programs needed for that computer and other software programs which are not needed for that computer;

selecting the software programs which are needed for that personal computer;

converting from unusable form into usable form the software programs which have been selected;

storing the converted software programs in usable form into the storage of the personal computer; and

paying royalties only on the programs which have been selected, converted and stored in the storage in usable form.

8. A method of installing a variable selection of software programs on a computer including the steps of Claim 7 wherein the method further includes the step of erasing the software programs which were not selected.

9. A method of installing selected software programs on a personal computer including the steps of Claim 7 wherein the step of selecting the software for a particular personal computer includes the step of identifying the user of that personal computer.

10. A method of Installing software programs including the steps of Claim 7 wherein the step of selecting the software programs for a particular personal computer includes the step of identifying the job function of the user and selecting software which is appropriate for the job function.

11. A method of installing software programs including the steps of Claim 10 wherein a listing

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of software for the user and his job function is displayed and an input determines whether software should be added or deleted as selected software programs to be included or excluded as usable software on the particular personal computer.

12. A personal computer system loaded with usable software comprising:

a processor, a storage device and several programs loaded on the storage device in such a way as to make the programs unusable;

a module associated with the processor for selecting certain of the programs loaded on the personal computer;

a module associated with the processor and responsive to the selecting of certain programs to make the selected programs active and usable; and

a module associated with the processor to make the programs which were not selected permanently unusable.

13. A personal computer system of the type described in Claim 12 wherein the module for making unusable the programs which were not selected includes a module for erasing from the storage device the programs not selected.

14. A personal computer system of the type described in Claim 12 wherein the module for selecting the programs which are selected includes a module for identifying the function of the user, and, in response to that function, for listing the programs which are appropriate for that function.

15. A personal computer of the type described in Claim 12 wherein the module for selecting the programs which are selected includes a user input which can add or delete programs from a listing of programs which are appropriate for that user, whereby a customized set of programs are created for the user and royalties on the customized listing of programs is created.

16. A method of preparing different computers with different software programs, the steps of the method comprising:

loading each computer with the superset of programs, each of the programs being in unusable form;

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selecting the subset of programs which are appropriate for the given computer, based on the user and his job function;

converting the selected programs into usable form and storing them on the hardfile of the personal computer; and

paying royalties only on the selected programs which have been converted and stored.

17. A method of the preparing personal computers including the steps set forth in Claim 16 wherein the method further includes the step of erasing the programs which have not been selected.

18. A method of preparing personal computers the type described in Claim 16 wherein the step of selecting the subset of programs includes a user input which serves to add to or delete from the list of programs based on user preferences.

19. A method of loading software onto personal computers including the steps of Claim 16 wherein the steps of the method include generating a list of software converted for each personal computer so that the appropriate royalties can be paid.

20. A method of loading software onto personal computers including the steps of Claim 19 wherein the step of generating the list of software further includes the step of transmitting that list of software to a host computer which assembles a list of software and royalties for a plurality of personal computers so that a single royalty can be paid for a plurality of personal computers.

21. A method of loading software onto personal computers including the steps of Claim 20 wherein the step of generating the list of software further includes preparing a list of the software for each computer along with a list of the user and the functional organization for each personal computer.

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EVIDENCE APPENDIX

Other than the Office Action(s) and reply(ies) already of record, no additional evidence has been entered by Appellants or the Examiner in the above-identified application which is relevant to this appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings as described by 37 C.F.R. §41.37(c)(1)(x) known to Appellants, Appellants' legal representative, or assignee.